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SENATE BILL 379

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE OFF-HIGHWAY MOTOR VEHICLE ACT TO PROVIDE FOR REGULATION OF THE OPERATION OF OFF-HIGHWAY VEHICLES TO ENSURE THEIR SAFE AND RESPONSIBLE OPERATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-3-1001.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 1) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle [~~safety~~] advisory board;

B. "department" means the department of game and

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1 fish;

2 [B-] C. "division" means the motor vehicle division
3 of the taxation and revenue department;

4 [G-] D. "fund" means the trail safety fund;

5 [D-] E. "off-highway motor vehicle" means a motor
6 vehicle designed by the manufacturer for operation exclusively
7 off the highway or road and includes:

8 (1) "all-terrain vehicle", which means a motor
9 vehicle fifty inches or less in width, having an unladen dry
10 weight of one thousand pounds or less, traveling on three or
11 more low-pressure tires and having a seat designed to be
12 straddled by the operator and handlebar-type steering control;

13 (2) "off-highway motorcycle", which means a
14 motor vehicle traveling on not more than two tires and having a
15 seat designed to be straddled by the operator and that has
16 handlebar-type steering control; [ø-]

17 (3) "snowmobile", which means a motor vehicle
18 designed for travel on snow or ice and steered and supported in
19 whole or in part by skis, belts, cleats, runners or low-
20 pressure tires;

21 (4) "recreational off-highway vehicle", which
22 means a motor vehicle designed for travel on four or more
23 non-highway tires, for recreational use by one or more persons,
24 and having:

25 (a) a steering wheel for steering

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1 control;

2 (b) non-straddle seating;

3 (c) maximum speed capability greater
4 than thirty-five miles per hour;

5 (d) gross vehicle weight rating no
6 greater than three thousand seven hundred fifty pounds;

7 (e) less than eighty inches in overall
8 width, exclusive of accessories;

9 (f) engine displacement of less than one
10 thousand cubic centimeters; and

11 (g) identification by means of a
12 seventeen-character vehicle identification number; or

13 (5) by rule of the department, any other
14 vehicles that may enter the market that fit the general profile
15 of vehicles operated off the highway for recreational purposes;

16 ~~[E.]~~ F. "staging area" means a parking lot,
17 trailhead or other location to or from which an off-highway
18 motor vehicle is transported so that it may be placed into
19 operation or removed from operation; and

20 ~~[F.]~~ G. "unpaved public roadway" means a dirt
21 graveled street or road that is constructed, signed and
22 maintained for regular passenger-car use by the general
23 public."

24 Section 2. Section 66-3-1004 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 200, as amended) is amended to read:

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1 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT
2 PERMIT FEES--RENEWAL--DISTRIBUTION OF FEES.--Fees shall be
3 collected and distributed as follows:

4 A. the fees for registering an off-highway motor
5 vehicle are:

6 (1) seventeen dollars (\$17.00) for each
7 off-highway motor vehicle, of which five dollars (\$5.00) is
8 appropriated to the division to defray the cost of making and
9 issuing registration certificates, validating stickers and
10 nonresident permits for off-highway motor vehicles. The
11 remaining twelve dollars (\$12.00) shall be deposited in the
12 motor vehicle suspense fund for distribution pursuant to
13 Section 66-6-23 NMSA 1978; and

14 (2) an amount determined by rule of the
15 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)~~]
16 forty-five dollars (\$45.00) for an off-highway user fee for
17 each off-highway motor vehicle, which shall be distributed to
18 the fund;

19 B. upon a change of ownership, the new owner shall
20 make application and pay registration fees of:

21 (1) seventeen dollars (\$17.00) in the same
22 manner as provided by rules of the division for original
23 registration; and

24 (2) an amount determined by rule of the
25 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)~~]

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1 forty-five dollars (\$45.00) for an off-highway user fee for
2 each off-highway motor vehicle, which shall be distributed to
3 the fund;

4 C. the fees for a nonresident permit of an
5 off-highway motor vehicle are either:

6 (1) seventeen dollars (\$17.00) for each
7 off-highway motor vehicle that is not registered in another
8 state; and

9 (2) an amount determined by rule of the
10 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)~~]
11 forty-five dollars (\$45.00) for an off-highway user fee for
12 each off-highway motor vehicle that is not currently in
13 compliance with a similar off-highway user fee law or rule in
14 another state, which shall be distributed to the fund; or

15 (3) seventeen dollars (\$17.00) for a
16 ninety-day permit to include both the off-highway motor vehicle
17 not otherwise registered and the off-highway user fee, of which
18 five dollars (\$5.00) is appropriated to the division to defray
19 the cost of making and issuing registration certificates,
20 validating stickers and nonresident permits for off-highway
21 motor vehicles. The remaining twelve dollars (\$12.00) shall be
22 deposited in the motor vehicle suspense fund for distribution
23 pursuant to Section 66-6-23 NMSA 1978;

24 D. except as provided in Paragraph (3) of
25 Subsection C of this section, each registration certificate and

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1 nonresident permit shall be:

2 (1) good for two years after the month in
3 which the off-highway motor vehicle is registered or the permit
4 is issued; and

5 (2) renewed every two years;

6 E. the off-highway user fee for each off-highway
7 motor vehicle shall be paid upon obtaining and renewing each
8 registration certificate or nonresident permit;

9 F. duplicate registration certificates and
10 nonresident permits shall be issued upon payment of a
11 seven-dollar-fifty-cent (\$7.50) fee, which is appropriated to
12 the division to defray the cost of making and issuing duplicate
13 registration certificates and nonresident permits for off-
14 highway motor vehicles;

15 G. a fee of one dollar (\$1.00) on registration
16 certificates and nonresident permits shall be collected for the
17 litter control and beautification fund; and

18 H. the [~~tourism~~] department, in conjunction with
19 [~~the division and the department of game and fish~~] other
20 agencies and departments, may establish and maintain sites to
21 collect fees and issue permits for residents and nonresidents."

22 Section 3. Section 66-3-1010.1 NMSA 1978 (being Laws
23 2005, Chapter 325, Section 9) is amended to read:

24 "66-3-1010.1. OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING
25 ORGANIZATION--APPROVAL AND CERTIFICATION.--

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1 A. An off-highway motor vehicle safety training
2 organization that offers and conducts an off-highway motor
3 vehicle safety training course shall be approved and certified
4 by the [~~board~~] department. Applicants for approval and
5 certification shall submit an application to the [~~board~~]
6 department for consideration.

7 B. The [~~board~~] department may approve and certify
8 an organization that meets the minimum criteria established by
9 the [~~board~~] department for an off-highway motor vehicle safety
10 training organization. Each approval and certification shall
11 be renewed annually."

12 Section 4. Section 66-3-1010.2 NMSA 1978 (being Laws
13 2005, Chapter 325, Section 10) is amended to read:

14 "66-3-1010.2. OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--
15 REQUIREMENTS--ISSUANCE.--A person under the age of eighteen
16 shall be required to successfully complete an off-highway motor
17 vehicle safety training course for which the person shall have
18 parental permission. The course shall be conducted by an off-
19 highway motor vehicle safety training organization that is
20 approved and certified by the [~~board~~] department. Upon
21 successful completion of the course, the person shall receive
22 an off-highway motor vehicle safety permit issued by the
23 organization."

24 Section 5. Section 66-3-1010.3 NMSA 1978 (being Laws
25 2005, Chapter 325, Section 11) is amended to read:

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1 "66-3-1010.3. OPERATION AND EQUIPMENT--SAFETY
2 REQUIREMENTS.--

3 A. A person shall not nor shall a parent, guardian
4 or custodian allow a child to operate an off-highway motor
5 vehicle:

6 (1) in a careless, reckless or negligent
7 manner so as to endanger the person or property of another;

8 (2) while under the influence of intoxicating
9 liquor or drugs as provided by Section 66-8-102 NMSA 1978;

10 (3) while in pursuit of and with intent to
11 hunt or take a species of animal or bird protected by law
12 unless otherwise authorized by the state game commission;

13 (4) in pursuit of or harassment of livestock
14 in any manner that negatively affects the livestock's
15 condition;

16 (5) within one hundred feet of an earthen tank
17 or other structure meant to water livestock or wildlife;

18 (6) in a manner that has a direct negative
19 effect on or interferes with persons engaged in the pursuit of
20 agricultural practices;

21 [~~4~~] (7) in excess of ten miles per hour
22 within two hundred feet of a business, animal shelter,
23 horseback rider, bicyclist, pedestrian, livestock or occupied
24 dwelling, unless the person operates the vehicle on a closed
25 course or track;

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1 [~~(5)~~] (8) unless in possession of the person's
2 registration certificate or nonresident permit;

3 [~~(6)~~] (9) unless the vehicle is equipped with
4 a spark arrester approved by the United States forest service;
5 provided that a snowmobile is exempt from this provision;

6 [~~(7)~~] (10) when conditions such as darkness
7 limit visibility to five hundred feet or less, unless the
8 vehicle is equipped with:

9 (a) one or more headlights of sufficient
10 candlepower to light objects at a distance of one hundred fifty
11 feet; and

12 (b) at least one taillight of sufficient
13 intensity to exhibit a red or amber light at a distance of two
14 hundred feet under normal atmospheric conditions; or

15 [~~(8)~~] (11) that produces noise that exceeds
16 ~~[ninety-six decibels when measured using test procedures~~
17 ~~established by the society of automotive engineers pursuant to~~
18 ~~standard J-1287]~~ the decibel levels established by rule of the
19 department pursuant to the Off-Highway Motor Vehicle Act.

20 B. A person under the age of eighteen shall not
21 operate an off-highway motor vehicle:

22 (1) or ride upon an off-highway motor vehicle
23 without wearing eye protection and a safety helmet that is
24 securely fastened in a normal manner as headgear and that meets
25 the standards established by the [~~board~~] department;

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1 (2) without an off-highway motor vehicle
2 safety permit in the person's possession; or

3 (3) while carrying a passenger.

4 C. A person under the age of eighteen but at least
5 ten years of age shall not operate an off-highway motor vehicle
6 unless the person is visually supervised at all times by a
7 parent, legal guardian or a person over the age of eighteen who
8 has a valid driver's license. This subsection shall not apply
9 to a person who is at least:

10 (1) [~~thirteen~~] fourteen years of age and has a
11 valid motorcycle license and off-highway motor vehicle safety
12 permit; or

13 (2) fifteen years of age and has a valid
14 driver's license, instructional permit or provisional license
15 and off-highway motor vehicle safety permit.

16 D. A person under the age of ten shall not operate
17 an off-highway motor vehicle unless

18 [~~(1) the all-terrain vehicle is an age-~~
19 ~~appropriate size-fit vehicle established by rule of the board;~~
20 and

21 ~~(2)]~~ the person is visually supervised at all
22 times by a parent, legal guardian or instructor of a safety
23 training course certified by the [~~board~~] department.

24 E. [~~The requirements of Subsections C and D of this~~
25 ~~section do not apply to a person who is part of an organized~~

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1 ~~tour under the guidance or direction of a guide certified by~~
2 ~~the board.] A person under the age of fourteen shall not~~
3 ~~operate the following subclasses of off-highway motor vehicles:~~

4 (1) an all-terrain vehicle;

5 (2) or a recreational off-highway vehicle.

6 F. An off-highway motor vehicle [~~may~~] shall not be
7 sold or offered for sale if the vehicle produces noise that
8 exceeds a level established by rule of the department no higher
9 than ninety-six decibels when measured using test procedures
10 established by the society of automotive engineers pursuant to
11 standard J-1287. This subsection shall not apply to an off-
12 highway motor vehicle that is sold or offered for sale only for
13 organized competition."

14 Section 6. Section 66-3-1010.5 NMSA 1978 (being Laws
15 2005, Chapter 325, Section 13) is amended to read:

16 "66-3-1010.5. REQUIREMENTS OF DEALERS TO DISTRIBUTE
17 SAFETY INFORMATION.--A dealer selling off-highway motor
18 vehicles shall distribute information [~~recommended~~] provided by
19 the [~~board~~] department to off-highway motor vehicle purchasers
20 on state laws, environmental and cultural considerations,
21 customs, safety requirements, training programs, operating
22 characteristics and potential risk of injury associated with
23 off-highway motor vehicles."

24 Section 7. Section 66-3-1011 NMSA 1978 (being Laws 1975,
25 Chapter 240, Section 11, as amended) is amended to read:

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1 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS--PROHIBITED
2 AREAS.--

3 A. A person shall not nor shall a parent, guardian
4 or custodian allow a child to operate an off-highway motor
5 vehicle on any:

6 (1) limited access highway or freeway at any
7 time; or

8 (2) any paved street or highway except as
9 provided in Subsection B of this section.

10 B. Off-highway motor vehicles may cross streets or
11 highways, except limited access highways or freeways, if the
12 crossings are made after coming to a complete stop prior to
13 entering the roadway. Off-highway motor vehicles shall yield
14 the right of way to oncoming traffic and shall begin a crossing
15 only when it can be executed safely and then cross in the most
16 direct manner as close to a perpendicular angle as possible.

17 C. A person shall not nor shall a parent, guardian
18 or custodian allow a child to operate an off-highway motor
19 vehicle on state game commission-owned, -controlled or
20 -administered land except as specifically allowed pursuant to
21 Chapter 17, Article 6 NMSA 1978.

22 D. A person shall not nor shall a parent, guardian
23 or custodian allow a child to operate an off-highway motor
24 vehicle on land owned, controlled or administered by the state
25 parks division of the energy, minerals and natural resources

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1 department, pursuant to Chapter 16, Article 2 NMSA 1978, except
2 in areas designated by and permitted by rules adopted by the
3 secretary of energy, minerals and natural resources.

4 E. A person shall not, without authorization, nor
5 shall a parent, guardian or custodian allow a child to remove,
6 deface or destroy a motor vehicle sign installed by a state,
7 federal, local or private land management agency or install,
8 without authorization, a motor vehicle sign."

9 Section 8. Section 66-3-1015 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 211, as amended) is amended to read:

11 "66-3-1015. ENFORCEMENT.--A wildlife conservation
12 officer, state police officer or peace officer of this state or
13 any of its political subdivisions, upon displaying the
14 officer's badge of office, has the authority to enforce the
15 provisions of the Off-Highway Motor Vehicle Act and may:

16 A. require an off-highway motor vehicle operator to
17 produce:

18 (1) the registration certificate or
19 nonresident permit;

20 (2) proof of successful completion of an off-
21 highway motor vehicle training course conducted by an off-
22 highway safety training organization approved and certified by
23 the [board] department, when required by Section [~~10 of this~~
24 ~~2005 act~~] 66-3-1010.2 NMSA 1978; and

25 (3) the personal identification of the

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1 operator; and

2 B. issue citations for violations of the provisions
3 of the Off-Highway Motor Vehicle Act."

4 Section 9. Section 66-3-1017 NMSA 1978 (being Laws 2005,
5 Chapter 325, Section 19) is amended to read:

6 "66-3-1017. OFF-HIGHWAY MOTOR VEHICLE [SAFETY] ADVISORY
7 BOARD CREATED--MEMBERS--COMPENSATION.--

8 [~~A. The "off-highway motor vehicle safety board" is~~
9 ~~created. The board consists of the following nine ex-officio~~
10 ~~members or their designees and seventeen appointed members:~~

11 ~~(1) the director of the department of game and~~
12 ~~fish;~~

13 ~~(2) the director of the motor vehicle~~
14 ~~division;~~

15 ~~(3) the secretary of transportation;~~

16 ~~(4) the secretary of public safety;~~

17 ~~(5) the commissioner of public lands;~~

18 ~~(6) the secretary of energy, minerals and~~
19 ~~natural resources;~~

20 ~~(7) the secretary of tourism;~~

21 ~~(8) the secretary of health;~~

22 ~~(9) the director of the state parks division~~
23 ~~of the energy, minerals and natural resources department;~~

24 ~~(10) one member of the New Mexico department~~
25 ~~of agriculture appointed by the board of regents of New Mexico~~

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1 ~~state university;~~

2 ~~(11) one representative from each of the~~
3 ~~state's six tourism regions with expertise in off-highway motor~~
4 ~~vehicle safety or motorized and non-motorized recreation, two~~
5 ~~of whom are appointed by the secretary of health, two of whom~~
6 ~~are appointed by the secretary of tourism and two of whom are~~
7 ~~appointed by the secretary of energy, minerals and natural~~
8 ~~resources, to include at least one member of:~~

9 ~~(a) a recognized off-highway motorcycle~~
10 ~~user group;~~

11 ~~(b) an all-terrain vehicle user group;~~
12 ~~and~~

13 ~~(c) a snowmobile user group;~~

14 ~~(12) three representatives from local law~~
15 ~~enforcement agencies appointed by the secretary of public~~
16 ~~safety;~~

17 ~~(13) two representatives from a conservation~~
18 ~~or environmental organization appointed by the secretary of~~
19 ~~energy, minerals and natural resources;~~

20 ~~(14) two off-highway motor vehicle dealers~~
21 ~~appointed by the secretary of tourism;~~

22 ~~(15) one health professional with expertise in~~
23 ~~injury prevention or treatment appointed by the secretary of~~
24 ~~health;~~

25 ~~(16) one representative from the United States~~

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1 bureau of land management appointed by the governor; and
2 (17) one representative from the United States
3 forest service appointed by the governor.

4 B. The board shall select a chairperson, a vice
5 chairperson and other officers as it deems necessary.

6 C. The board shall meet at the call of the
7 chairperson but not less than twice annually. A majority of
8 members constitutes a quorum for the transaction of business.
9 The affirmative vote of at least a majority of the quorum
10 present shall be necessary for an action to be taken by the
11 board.

12 D. Members shall be appointed to staggered terms of
13 two years each; provided that no more than nine terms expire in
14 any one year. The ex-officio board members shall select by lot
15 nine appointed members to serve initial terms of three years
16 each. A vacancy shall be filled by appointment by the original
17 appointing authority for the remainder of the unexpired term.

18 E. Appointed members, except for representatives of
19 federal agencies, of the board are entitled to reimbursement
20 for attending meetings of the board as provided for nonsalaried
21 officers in the Per Diem and Mileage Act and shall receive no
22 other compensation, perquisite or allowance.]

23 A. The "off-highway motor vehicle advisory board"
24 is created to advise the department on matters related to
25 administration of the Off-Highway Motor Vehicle Act. The board

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1 shall consist of the following five members appointed by the
2 governor to serve terms at the governor's discretion:

3 (1) one landowner living near a national
4 forest or bureau of land management property, which is used
5 extensively for recreational off-highway vehicle activity;

6 (2) one livestock producer;

7 (3) one off-highway motor vehicle user;

8 (4) one hunter or angler; and

9 (5) one hiker, backpacker, birdwatcher or
10 other quiet recreationalist.

11 B. The board shall select a chair and a vice chair.

12 C. The board shall meet at the call of the chair
13 but not less than twice annually.

14 D. Members of the board shall be entitled to
15 reimbursement pursuant to the Per Diem and Mileage Act."

16 Section 10. Section 66-3-1018 NMSA 1978 (being Laws 2005,
17 Chapter 325, Section 20) is amended to read:

18 "66-3-1018. [~~BOARD~~] DEPARTMENT--POWERS AND DUTIES.--

19 A. The [~~board may~~] department shall cooperate with
20 appropriate federal agencies, public and private organizations
21 and corporations and local government units to implement the
22 provisions of the Off-Highway Motor Vehicle Act.

23 B. The [~~board shall~~] department:

24 (1) shall accept and evaluate all applications
25 for approval and certification of an off-highway motor vehicle

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1 safety training organization and approve and certify those that
2 meet the minimum criteria;

3 (2) shall notify the division of the off-
4 highway motor vehicle safety training organizations that have
5 received approval and certification;

6 (3) shall establish and revise as appropriate
7 minimum criteria [~~by January 1, 2007~~] to approve and certify an
8 off-highway motor vehicle safety training organization. The
9 criteria shall include requirements for curriculum and
10 materials for:

11 (a) training instructors to teach
12 off-highway motor vehicle safety;

13 (b) training the public about
14 off-highway motor vehicle safety and age-appropriate size-fit
15 use of off-highway motor vehicles; and

16 (c) teaching responsible use of
17 off-highway motor vehicles with respect to environmental
18 considerations, private property restrictions, agricultural and
19 rural lifestyles and cultural considerations, off-highway motor
20 vehicle operating laws and prohibitions against operating off-
21 highway motor vehicles under the influence of alcohol or drugs;

22 (4) shall implement [~~by January 1, 2007~~] a
23 state off-highway motor vehicle safety training and
24 certification program;

25 (5) shall adopt and promulgate rules regarding

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1 the:

2 (a) age-appropriate size-fit use of off-
3 highway motor vehicles;

4 (b) acceptance or accreditation of
5 instruction or safety courses provided by other states; and

6 (c) standards covering the
7 specifications of eye protection and safety helmets;

8 (6) may recommend, with public participation
9 and input, off-highway motor vehicle park, facility and trail
10 locations to the state, county, tribal or local governing body
11 or private entity that owns or administers the land upon which
12 the park, facility or trail is located. The [~~board~~] department
13 shall establish criteria to recommend locations that include
14 consideration of off-highway motor vehicle operating laws and
15 effects on:

16 (a) wildlife and the environment;

17 (b) adjacent state, county, federal,
18 tribal and private property;

19 (c) other recreational and
20 nonrecreational uses on the same or adjacent lands; and

21 (d) archaeological, cultural and
22 historic resources and customs;

23 (7) shall recommend restoration or, if deemed
24 necessary, closure of off-highway motor vehicle tracks or
25 trails to the state, county, tribal or local governing body or

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1 private entity that owns or administers the land upon which the
2 tracks or trails are located if they pose significant or
3 irreversible environmental damage, a danger to users or a
4 public nuisance as determined by the ~~[board]~~ department. The
5 ~~[board]~~ department shall consider the construction of
6 alternative tracks or trails as part of the closure process;

7 (8) shall accept and evaluate all applications
8 for grants from the fund ~~[and make recommendations to the~~
9 ~~tourism department]~~ for implementation of the provisions of the
10 Off-Highway Motor Vehicle Act. The ~~[board]~~ department shall
11 establish criteria for grants from the fund that include
12 consideration of the:

13 (a) applicant's financial and legal
14 status;

15 (b) applicant's management plan,
16 including specific measures to avoid or minimize environmental
17 damage to public and private lands and danger to users and
18 spectators;

19 (c) operating budget for the park,
20 trail, facility or staging area;

21 (d) availability of matching funds; and

22 (e) public participation and input;

23 [~~and~~]

24 (9) shall certify tour guides;

25 (10) shall prepare a management plan that

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1 accomplishes the purposes of the Off-Highway Motor Vehicle Act
2 in a cost-effective manner and relies on existing agencies'
3 available funding with specific qualifications for program
4 implementation, which shall include joint powers agreements
5 with the department of public safety and other law enforcement
6 agencies for law enforcement and other agencies as appropriate
7 for carrying out the provisions of the Off-Highway Motor
8 Vehicle Act;

9 (11) shall develop and implement an overall
10 enforcement strategy for the entire state that includes:

11 (a) cooperation with federal, state and
12 local law enforcement agencies to provide training and
13 educational materials related to off-highway motor vehicle use;

14 (b) coordination efforts related to
15 off-highway motor vehicle use with participating law
16 enforcement agencies;

17 (c) developing strategies for addressing
18 and resolving impacts on farmers and ranchers in rural
19 agricultural areas and on non-motorized recreationists by
20 off-highway motor vehicle use; and

21 (d) using law enforcement DUI-type
22 "blitzes" in heavily used areas, staging areas or other problem
23 areas;

24 (12) shall develop and implement an overall
25 educational strategy for the entire state that:

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1 (a) incorporates materials developed by
2 the United States department of agriculture forest service
3 program that teaches trail etiquette and respect for natural
4 resources;

5 (b) includes the development of New
6 Mexico-specific written, video or other educational materials
7 and educational programs that address the impact of off-highway
8 motor vehicles on traditional living culture, agricultural land
9 and private property; and

10 (c) includes the development and
11 maintenance of a web site containing rules and regulations,
12 safety information and educational material relating to
13 resource protection and the impact of off-highway motor
14 vehicles on traditional living culture, agricultural land and
15 historical sites;

16 (13) shall develop an overall strategy for
17 phased implementation of an information system to track
18 information, such as use patterns, injury data, ecological
19 data, natural resource data and data relating to the impact of
20 off-highway motor vehicles on traditional living culture and on
21 agricultural land. The strategy shall include:

22 (a) identification and implementation of
23 appropriate data collecting mechanisms, such as a toll-free
24 number or a web-based data collecting process; and

25 (b) development of an information system

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1 program capable of interfacing with existing government and
2 private databases or other information systems;

3 (14) may implement noise restrictions and
4 their enforcement by the testing of sound levels of off-highway
5 motor vehicles at the time of registration and equip law
6 enforcement officers with sound meters for field testing of
7 sound levels;

8 (15) may conduct or may contract with an
9 entity, such as New Mexico state university, the range
10 improvement task force or the other entities qualified to
11 conduct analysis of the impact of off-highway motor vehicle use
12 on forests, rangeland and other natural resources and use the
13 data obtained to make recommendations to the appropriate land
14 management agency;

15 (16) shall review the definition of
16 "off-highway motor vehicle" as needed to include new classes of
17 off-highway motor vehicles as they become available in the
18 marketplace; and

19 (17) shall, in cooperation with the division,
20 determine the size, composition, attachment mechanism, letter
21 or number height and other properties of off-highway motor
22 vehicle identification. This identification may be a
23 traditional license plate, stick-on lettering as used for boat
24 identification or another form of identification that is
25 visible and readable."

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1 Section 11. Section 66-3-1019 NMSA 1978 (being Laws 2005,
2 Chapter 325, Section 21) is amended to read:

3 "66-3-1019. FUND CREATED--DISPOSITION.--

4 A. The "trail safety fund" is created in the state
5 treasury. The fund is a nonreverting fund and consists of
6 revenues from off-highway motor vehicle registration and user
7 fees, grants and donations. No more than thirty percent of the
8 fund may be used for administrative overhead, and at least
9 fifty-five percent shall be devoted to law enforcement. Income
10 from investment of the fund shall be credited to the fund. The
11 fund shall be administered by the [~~tourism~~] department, and
12 money in the fund is appropriated to the [~~tourism~~] department
13 to carry out the purposes` `` of the
14 Off-Highway Motor Vehicle Act. Expenditures from the fund
15 shall be by warrant of the secretary of finance and
16 administration upon vouchers signed by the [~~secretary of~~
17 ~~tourism or the secretary's~~] director of game and fish or the
18 director's authorized representative.

19 ~~[B. The tourism department, upon recommendation by~~
20 ~~the board, shall make distributions from the fund to develop~~
21 ~~and maintain trails, build and maintain staging areas, market~~
22 ~~safety programs and promote safety for off-highway motor~~
23 ~~vehicles.]~~

24 B. The department shall make annual distributions
25 from the fund for the following purposes:

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- 1 (1) administrative;
- 2 (2) law enforcement;
- 3 (3) education and training;
- 4 (4) information system development and
- 5 management;
- 6 (5) resource monitoring and protection and
- 7 trail building, maintenance and restoration; and
- 8 (6) implementation of other provisions of the
- 9 Off-Highway Motor Vehicle Act."

10 Section 12. Section 66-3-1020 NMSA 1978 (being Laws 2005,
11 Chapter 325, Section 22) is amended to read:

12 "66-3-1020. PENALTIES.--

13 A. ~~[Unless the violation is declared a felony, a~~
14 ~~petty misdemeanor or a citation under the Motor Vehicle Code]~~ A
15 person who violates the provisions of the Off-Highway Motor
16 Vehicle Act is guilty of a penalty assessment misdemeanor.
17 ~~[pursuant to Section 66-8-7 NMSA 1978.~~

18 B. ~~When a person is convicted of a felony or~~
19 ~~misdemeanor committed while operating an off-highway motor~~
20 ~~vehicle, the court may order the person to complete a~~
21 ~~board-certified safety training course]~~ As used in the Off-
22 Highway Motor Vehicle Act, "penalty assessment misdemeanor"
23 means violation of any provision of the Off-Highway Motor
24 Vehicle Act for which the following listed penalty assessment
25 is:

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1 (1) two hundred dollars (\$200) for the first
2 violation;

3 (2) five hundred dollars (\$500) for a second
4 violation within five years of the first; and

5 (3) eight hundred dollars (\$800) for a third
6 or subsequent violation within five years of the first.

7 B. If the violation involved significant resource
8 damage, riding in designated wilderness areas or other
9 restricted areas or interference with the livelihood of an
10 individual engaged in agriculture, the fines are doubled.

11 C. The term "penalty assessment misdemeanor" does
12 not include a violation that has caused or contributed to the
13 cause of an accident resulting in injury or death to a person.

14 D. When an alleged violator of a penalty assessment
15 misdemeanor elects to accept a notice to appear in lieu of a
16 notice of penalty assessment, a fine imposed upon later
17 conviction shall not exceed the penalty assessment established
18 for the particular penalty assessment misdemeanor, and
19 probation imposed upon a suspended or deferred sentence shall
20 not exceed ninety days."

21 Section 13. A new section of the Off-Highway Motor
22 Vehicle Act is enacted to read:

23 "[NEW MATERIAL] LEGISLATIVE OVERSIGHT.--In addition to
24 reporting to the legislative finance committee pursuant to the
25 performance review and budgeting process, the department shall

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1 annually report to the appropriate interim committee appointed
2 by the New Mexico legislative council on the status of
3 implementation of the Off-Highway Motor Vehicle Act."

4 Section 14. TEMPORARY PROVISIONS--TRANSFER OF PERSONNEL,
5 PROPERTY, CONTRACTS, RECORDS AND APPROPRIATIONS.--On July 1,
6 2009, all records, personnel, appropriations, money, equipment,
7 supplies and other property of the tourism department pursuant
8 to administration and enforcement of the Off-Highway Motor
9 Vehicle Act shall be transferred to the department of game and
10 fish and all contracts pursuant to the Off-Highway Motor
11 Vehicle Act shall be binding and effective on the department of
12 game and fish.

13 Section 15. REPEAL.--Sections 66-3-1004.1 and 66-3-1016
14 NMSA 1978 (being Laws 2005, Chapter 325, Section 4 and Laws
15 1978, Chapter 35, Section 212, as amended) are repealed.

16 Section 16. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.